

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

SOUTHERN PACIFIC COMPANY
(Pacific Lines)

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) The Southern Pacific Company (Pacific Lines), hereinafter referred to as "the Carrier," violated the currently effective Agreement between the parties, Article 1, Section (c) and the agreed-upon interpretation thereof contained in Memorandum of Understanding dated September 13, 1937 in particular when, on June 8, 1965, it permitted and/or required an officer of the Carrier and/or other employees not within the scope of said Agreement, to assume primary responsibility for the movement of trains between Warm Springs and Milpitas, California on the Niles Subdivision of Carrier's Western Division.

(b) For the above violation, Carrier shall now be required to compensate Claimant A. R. McElrath one day's pay at trick train dispatcher rate of pay for June 8, 1965, a day upon which he was deprived of train dispatching work for which he was qualified and available, and to which he was entitled under the provisions of the Agreement, but which work was performed by an employee or employees of the Carrier not within the scope of said Agreement.

EMPLOYEES' STATEMENT OF FACTS: There is an Agreement in effect between the parties, a copy of which is on file with this Board, and the same is made a part of this submission as though it were fully set forth herein.

Attached hereto as Exhibit TD-1 is a copy of Memorandum of Understanding dated September 13, 1937 containing an agreed-upon interpretation of Article 1, Section (c) of said Agreement and, for ready reference, Article 1, Section (c) is here quoted in its entirety:

"ARTICLE 1.

Section (c). Definition of Trick Train Dispatchers' Positions.
The above class includes positions in which the duties of incumbents

in the current agreement to support a claim regarding trains moving within yard limits without train orders under Rule 93 of the Rules and Regulations of the Transportation Department.

By letter dated March 5, 1966 (Carrier's Exhibit C), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, contending that:

"STATEMENT OF CLAIM: It is the position of the employees represented by the American Train Dispatchers Association that the assistant trainmaster by his actions as stated in statement of facts was a third party primarily responsible for the movement of this train between the stations named and did so in violation of Article 1, Section (c) of the current agreement and the agreed upon interpretation thereof between the parties dated September 13, 1937 and this work has been historically, traditionally and customarily performed by the train dispatcher on duty and is fully supported by the schedule agreement rules as well as various NRAB awards of which 6885, 7575, 7576 and 9846 on this property are a few."

Carrier's Assistant Manager of Personnel denied the claim by letter dated September 12, 1966 (Carrier's Exhibit D).

(Exhibits not reproduced.)

OPINION OF BOARD: A careful review of the Record in this docket shows that the claim as handled on the property and appealed to the highest officer of the Carrier designated to handle disputes alleged that:

"On June 8, 1965 between the hours of 7:45 P.M. and 8:45 P.M. Extra East, Conductor McGee and Engineer Weaver moved from Warm Springs to Milpitas upon the instructions of and on the authority of Assistant Trainmaster on duty at that time at Warm Springs. This move made in single track territory without train order authority or timetable authority."

After the claim had been denied and discussed in conference on the property, the General Chairman of the Organization admitted that there was no basis for the contention that the movement involved had been made under the control of the Assistant Trainmaster, but contended that the Agreement was violated even though "the crew did move from Warm Springs to Milpitas on their own rather than in accordance with specific instructions from the Assistant Trainmaster on duty at Warm Springs * * *."

In its submission to the Board the Petitioner alleges a violation of the Agreement by the Carrier:

"* * * when, on June 8, 1965, it permitted and/or required an officer of the Carrier and/or other employees not within the scope of said Agreement, to assume primary responsibility for the movement of trains between Warm Springs and Milpitas, California on the Niles Subdivision of Carrier's Western Division."

We agree with argument by and on behalf of the Carrier that the Statement of Claim presented to the Board is substantially different from the State-

ment of Claim presented to the Carrier on the property. We have consistently held that where there is a substantial variance between the claim handled on the property and that presented to the Board, we cannot resolve the dispute. Awards 16525, 15384, 14258, 13235. We will accordingly dismiss the claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the claim shall be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1968.